



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

November 28, 2005

#### CERTIFIED RETURN RECEIPT 7099 3400 0016 8894 6116

John Hewitt  
Interstate Brick Company  
9780 South 5200 West  
West Jordan, Utah 84088

Subject: Reassessment for Cessation Order MC-2005-01-13, Interstate Brick Company, Snow White Mine, M/049/030, Utah County, Utah

Dear Mr. Hewitt:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on September 28, 2005. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts which were not reasonably available on the date of the issuance of the proposed assessment. Following is the reassessment of the penalty for the cessation order:

- MC-05-01-13- Violation 1 of 1      \$660

The enclosed worksheet specifically outlines how the violation was reassessed. Even though the violation has now been terminated, you are still required to pay the penalty.

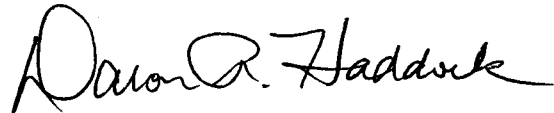
Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the reassessed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer

DRH:jb

Enclosure: Worksheets

cc: Vickie Southwick, Exec. Sec.  
Vicki Bailey, Accounting

O:\M049-Utah\M0490030-SnowWhite\non-compliance\proAssessment-CO.doc



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

**State of Utah**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Division of Oil, Gas & Mining**

MICHAEL R. STYLER  
Executive Director

JOHN R. BAZA  
Division Director

**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Interstate Brick Company/ Snow White Mine PERMIT M/049/030

NOV / CO # MC-2005-01-13(1) VIOLATION 1 of 1

REASSESSMENT DATE November 28, 2005

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>none</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

**TOTAL HISTORY POINTS** 0

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *An Operator is required to obtain approval from the Division of Oil Gas and Mining prior to conducting mining operations. Acreage outside the approved and bonded mine permit area has been disturbed at this location without revising the permit to do so. Approximately 5 acres that was not under reclamation surety has been recently mined. This area had been previously disturbed by the operator, but had not been included in the reclamation surety accepted on April 5, 2004. Disturbance has actually occurred.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The inspector stated that the operator has disturbed approximately 5 acres of land that had not been approved for disturbance. The damage was the loss of vegetation and soil resources from the area disturbed. Further discussion with the inspector revealed that the damage is probably temporary. While the soil and vegetation have been disturbed, the site could still be reclaimed. Even though the damage is extensive over the property, it probably does not leave the site of disturbance. Damage is assessed in the lower 1/3 of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?                       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

**TOTAL SERIOUSNESS POINTS (A or B) 28**

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

**ASSIGN NEGLIGENCE POINTS 8**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector indicated that the violation was the result of the Operator not taking reasonable care in keeping track of the acreage disturbed. On May 5, 2003, the Operator was notified that he had expanded beyond 5 acres and was directed to either permit as a large mine or reclaim sufficient area to reduce the disturbance to less than 5 acres. The Operator had planned to reclaim some areas, but did not complete the reclamation and receive release before he had reimpacted some of the area. Approximately 5 acres of disturbance beyond that previously authorized has occurred. This indicates indifference to the rules or misunderstanding of the rules. A prudent operator would understand the need to keep within the approved boundaries and obtain approval prior to disturbing an area. The Operator was negligent in this regard, thus the assignment of points in the middle part of the negligence range.*

**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?  
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10  
(Permittee used diligence to abate the violation)
- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS 0

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* Since plans were required for abating this violation the abatement is considered to be difficult. The operator was required to provide evidence that Interstate Brick Company has the legal right to enter upon the area to be mined. This was received very timely, in the form of a letter on September 29, 2005. Another part of the abatement required the boundary of the mine site be marked with steel posts. This was also done very timely and the Division was notified of this by email on September 13, 2005. The operator was also required to submit a Notice of Intent for a large mining operation by October 31, 2005. The LMO was actually received November 3, 2005.

*The Operator did comply rapidly on some of the requirements and was very near the abatement period on the LMO application. Overall the result balances out to normal compliance with the abatement requirements and the Operator receives good faith points in the upper part of the normal compliance range.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <u>MC-05-01-13(1)</u>	
I. TOTAL HISTORY POINTS	<u>0</u>
II. TOTAL SERIOUSNESS POINTS	<u>28</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-10</u>
TOTAL ASSESSED POINTS	<u>26</u>
 TOTAL ASSESSED FINE	 <u>\$ 660</u>